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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,980	07/24/2003	Daniel Philpott	60130-1669; 02MRA0574	1701

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EXAMINER
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STORMER, RUSSELL D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/625,980	<b>Applicant(s)</b> PHILPOTT, DANIEL	
	<b>Examiner</b> Russell D. Stormer	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 6-8, 13, 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fry.

The first and second plates are shown at 15, the torque plates at 16, and the spindles 34 extend through openings in the torque plate 16. See especially figure 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 3, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fry in view of Pringle.

The axle assembly of Fry does not show a brake assembly.

Pringle teaches a suspension assembly comprising an axle assembly in which a spindle 32 is mounted to a plate or arm 30 and a wheel assembly is mounted on the spindle. The wheel assembly includes a brake assembly (unlabelled) as shown in

figure 2. From this teaching it would have been obvious to provide a brake assembly with the wheel assembly which is to be mounted on the hub 33 of Fry, which is mounted to the spindle 34. The brake assembly would therefore be mounted to the torque plate 16 indirectly. This arrangement would allow the wheel and brake assemblies to be attached to the axle assembly as a single unit and thus simplify assembly.

5. Claims 10, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fry in view of Pringle.

The references are applied and combined as set forth in paragraphs 4 and 6 above with respect to the first and second plates, the torque plates, and the mounting of the brake assembly. The references are further applied in that the method of fabricating the axle assembly would have been obvious in view of the construction of the assembly shown by Fry in figure 1.

Fry does not describe the torque plate 16 as being welded to the plate 15, but also does not show fasteners being used to join the members.

It would have been obvious to those of ordinary skill in the art to weld the torque plates 16 to the first and second plates 15 as welding is well-known in the axle art and the metal joining art. Since the connection is an angled connection, welding would be a suitable option for joining these members and would be more practical than using fasteners such as rivets or bolts, which generally need parallel surfaces to be most effective.

***Allowable Subject Matter***

6. Claims 15-19 are allowable over the prior art of record.
7. Claims 6, 7, 8, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments filed January 12, 2005 have been fully considered but they are not persuasive.

Applicant's claims are broad enough that the axle assembly of Fry is considered to read on them. For instance, note that the second plate in claim 1 is inferentially set forth, and "a torque plate is fixed to each of the first and second segments," not to the axle housing as argued in paragraph 3 of the Remarks. The claim does not define what is meant by the first and second segments, or where they are disposed. Are these segments of the axle housing?

Further, claim 1 is broad enough that it is not clear if it is the axle housing or a torque plate that is mounted at least partially between the first and second plates.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-3768. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM. After approximately April 11, 2005, the Examiner can be reached at (571) 272-6687.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/1/05

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 3/1/05